# The Solicitors' Journal

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## Current Topics.

### A Holiday Reflection.

IT WAS an old retired coastguardsman who set us thinking about the fraudulent tendency of the present times. "Before the war," he said, "when I started a few chairs on the beach, and let out bathing tents and costumes, people behaved themselves like gentlefolk. If I happened to be out fishing, and they used my tents or my chairs, they always left the money for me. Now it's all the other way. If I ask threepence for a chair they look surprised, and say they thought they were free. Next they say they haven't any change, but as they'll be using the chairs again after lunch they'll pay me then. Of course, that's the last I see of them. These trippers come and take my bathing costumes. Sometimes they leave an old one behind and take one of my new ones. Everybody seems out to do everyone else, since the war."

Learned judges and recorders charging grand juries have expressed much the same sentiments, dealing with the matter, of course, on a bigger scale. Commercial dishonesty, long firm frauds, false pretences, and sharp practice seem to have grown apace. Probably the war had a good deal to do with it. Service in a war-time army taught many honest men to be tricky in a hundred little ways, and alas! they brought their trickeries home with them into civil life, so that the community became leavened with a certain habit of dishonesty from which it has not yet recovered. We may, perhaps, console ourselves with the thought that, on the whole, we are certainly less given to drunkenness, and, perhaps, to violence, than before the war, but it is a pity if we are going to remain less upright.

### Assessors of Taxes.

THE SUGGESTION of Sir ERNEST GOWERS, Chairman of the Board of Inland Revenue, to the Select Committee on Estimates, that the office of Assessor of Taxes should be abolished and the functions of that office delegated to the Board's Inspectors of Taxes, has met with the reception which might have been expected. The Assessor is a local official, with local knowledge, appointed by local Commissioners, while the Inspector is an official who is frequently transferred from one part of the country to another and cannot be expected to be acquainted with local conditions. Solicitors especially appreciate the ready assistance rendered by the local man and are alive to the importance of nipping in the bud any attempt to extend bureaucratic control. The proposal is unsound in suggesting that such a course would result in a saving of £55,000 to the Revenue. This could not be the case. We have yet to learn of a Government Department undertaking more duties without at least a corresponding increase in staff and, quite apart from the expense which would have to be incurred by the taxpayer in defending claims for reduction of excessive assessments, it would probably result in a loss to the Exchequer. While we believe that Inspectors of Taxes perform their duties with efficiency and with the utmost desire to be fair to the taxpayer, we are unable to believe that a Revenue official, whose sphere of duty is changed so frequently, can possess that local knowledge which is so essential to equitable assessments. The Assessor is appointed as part of a scheme, with the General Commissioners at the head, to defend the taxpayer from any excess of officialdom to which he might be exposed, and the loss of this official would not be accepted lightly by practitioners who, especially, are able to judge what would be the results of increasing the functions and powers of the Board of Inland Revenue. Those of our readers who are Clerks to Commissioners will know that, on more than one occasion, attempts have been made by the Revenue authorities to usurp the functions of the Commissioners and we anticipate that the present recommendation will prove as fruitless as its forerunners.

### The Landlord and Tenant Act Rules.

WE SHOULD like to draw attention to an important alteration in the Landlord and Tenant (County Court) Rules, which might easily be overlooked as it is contained in a short paragraph in the New County Court Order which deals with various other matters. The rule in question is r. 8 of S.R. & O., 1928, No. 506—L. 18, and might appear to anyone unfamiliar with the point involved to be of no importance, whereas in fact it effects an alteration of the utmost importance. It will be remembered that Ord. 50B, r. 5 (4), of the County Court Rules, made in pursuance of the Landlord and Tenant Act, 1927, provided, to use the exact phraseology of the rule, that "no proceedings be commenced *until* the expiration of *two months* from the date whereon the plaintiff shall have served on the defendant his claim for compensation." Although the latter words "claim for compensation" tended to show that the above rule was to apply only to proceedings for compensation, yet it was arguable that the rule applied to proceedings for a "new lease" under s. 5 of the Landlord and Tenant Act as well. In that event difficulties in the working of the rule were bound to arise in the case of tenancies terminated by notice, since, according to sub-s. (2) of s. 5 of the Act, application had to be made to the tribunal *within two months* after the service of the notice claiming a new lease. In such cases, therefore, s. 5 (2) of the Act and the above rule were flatly contradictory, since, while the former provision required the application to the court to be made *within two months* of the service of the notice requiring a new lease, the latter provision

forbade the making of any such application *until after* the expiry of the same period. If, however, r. 5 (4) was to be construed as applying only to claims for compensation, and not to claims for a new lease, no such difficulty would arise, and the amendment to the above Rules now made by S.R. & O., 1928, No. 506—L. 18, r. 8, makes it quite clear that this is the manner in which the rule is to be construed, since it provides that the words "under section one or section four of the Act" shall be inserted after the word "proceedings" in r. 5 (4), so that the latter rule will now read as follows: "No proceedings (under s. 1 or s. 4)"—i.e., no proceedings claiming *compensation* for improvements or for goodwill—"shall be commenced until the expiration of two months from the date whereon the plaintiff shall have served on the defendant his claim for compensation."

## Motoring Offences.

THE NEW police order that has recently been made with regard to giving warning to first offenders who have committed certain motoring offences will undoubtedly lead to a saving of a great deal of time and expense, not only on the part of the police themselves, but also on the part of the motoring public, a body that is gradually increasing year by year. There would appear to be something like eighty-eight offences under the Motor Cars Act, and the new police order divides them into three categories. In one category are included thirty-five offences in respect of which no previous warning will be given; in another, are included seventeen other offences in respect of which the giving of a warning will be in the discretion of Scotland Yard, while in the last category are included the thirty-six other offences in respect of which warnings are obligatory. With regard to this last class of offence the point arises as to how one can possibly keep from the knowledge of the court the fact that a previous charge might have been preferred against the person charged, for it is a recognised general rule that, on the trial of a person, no evidence of any previous conviction may be given, nor even evidence that other charges have or might have been preferred against him; and if the offence is one that comes within the category of offences in respect of which a warning must first have been given, the inference is irresistible that the person now before the court might on a previous occasion have been charged with a similar offence. There would be only one way in which this difficulty may be obviated, and that is by the person warned denying his guilt and inviting the Commissioner to have the truth or otherwise of the charge judicially determined, but cases will undoubtedly be rare, where this course will be adopted. If the new system suffers from this defect, at any rate, it does away with some of the disadvantages of the previous system. One may take, for instance, the case of the motorist who has, through sheer inadvertence, left his licence at home, and who subsequently produces his licence at the police station. The police, nevertheless, insist on summoning him, with the result that the time of the police, as well as the person summoned, is wasted, and unnecessary expense incurred, which is quite disproportionate to the offence, and all for the sake of securing a conviction and a fine of a few odd shillings!

## A Post Office Blunder.

IN A RECENT police court case severe comments were passed by the chairman on the negligence of the Post Office authorities. The defendant, a telephone linesman in their employ, was charged with stealing certain money from the coin boxes of public telephones in his area. He pleaded guilty, and it was proved that he had been twice convicted of larceny before entering the public service. It was stated that the authorities had taken him into their employment direct from the Labour Exchange, without making adequate inquiries as to his previous history. From the public point of view it is, of course, a matter of grave concern that a Government Department should employ in a position of trust a person who has previously brought himself within the jurisdiction of the criminal courts; there is also another aspect of the case, even more striking to lawyers. It is not right that a person who is prone to temptation, and who has succumbed to it once, perhaps twice, should be placed in a position where further temptation is offered him. It is the object of our system to assist in the reformation of the unfortunate, not to make it easier for them to re-appear in the dock. The chairman remarked that this was not the first time that he had been called upon to comment on such negligence on the part of the Post Office authorities. It is certainly a matter to which they should direct their vigilance.

## Municipal Titles.

TO THE generality of mankind titles of honour have always made a strong appeal. Even in the United States, where the grant of hereditary titles is prohibited, the citizens have shown, as their countryman OLIVER WENDELL HOLMES put it, "the most enormous appetites for old world titles of distinction." The title "Honourable" is freely bestowed or assumed; the same is true of "Governor," which attaches to everyone who has at any time held the office of chief of a State. Just as once a mortgage always a mortgage, so once a governor always a governor. FREEMAN, the historian, mentioned somewhere his embarrassment at finding this on his visit to America in 1882: "More than once," he said, "when I had been introduced to 'Governor A,' and had put myself into a proper mood of respect towards the chief magistrate of the State, I found that all that was meant was that the gentleman to whom I was speaking had been Governor in time past." In this country the desire for titles is general, and in most cases quite a legitimate ambition. It extends not only to personal but to official distinctions. Thus, it has long been a sore point that the head of many of our great municipal corporations should be denied the title of Lord Mayor. Now, by the gracious act of His Majesty, this grievance has been removed in the case of Nottingham and several other large towns, the citizens of which now being gratified to find their municipal status thus honourably improved. So far as we can recall, the courts of this country have never sought to exercise any control over the assumption of titles by the heads of municipal corporations. It has been otherwise in Scotland, where the Court of Session, in a case about the middle of last century, declined to recognise the "Lord Provost" of Aberdeen, that dignitary in the opinion of the court being at that time only entitled to the inferior title of "Provost."

## Illegible Depositions.

AT THE Yorkshire Assizes recently Mr. Justice MACKINNON had occasion to complain strongly of the illegibility of several of the depositions put before him, whereby, as he said, his labours had been quite unnecessarily increased. In his charge to the Grand Jury he requested them to impress upon those concerned the desirability, to say the least of it, of insisting that the clerks, whose duty it is to take depositions, should at least be able to write. This, it might be thought, makes no extravagant demand upon the capabilities of the persons charged with this important duty. But would not the difficulty be altogether avoided by making general use of the typewriter? At one time the use of typescript in legal documents was severely frowned upon by practitioners of the old school, and indeed it is said that Lord DAVEY, when at the Bar and at the height of his fame, returned a brief which had been typed on the ground that he could not read it! Those days, however, have long past, and the substitution of typescript for indifferent or illegible handwriting is one of the blessings that have come to professional and business life. In accordance with the old prejudice to which we have referred, several of the judges expressed the opinion at one time that

depositions printed by a typewriter were inadmissible, but in a note to a Home Office Circular dated 12th May, 1891, it is stated that the judges "have expressed the opinion that depositions may be lawfully taken in typewriting, provided they are read over and signed by the witness immediately after the evidence has been given." We are not aware to what extent in practice this view has been acted upon, but obviously there are courts in Yorkshire to which the typewriter has not yet penetrated, at all events for the purpose of taking the depositions of witnesses. Possibly, however, Mr. Justice MACKINNON'S well-founded complaint may bring about the needed reform and thus relieve the judges from that waste of time and irritation of temper which are the inevitable concomitants of having to wrestle with bad handwriting.

### Diplomatic Privilege.

THE METHOD of ascertaining whether or not a person is entitled to diplomatic privilege was considered by the House of Lords on the 18th ult. in the case of *Engelke* v. *Musmann*, which came before them on appeal from a majority decision of the Court of Appeal. The matter, which began about two years ago, arose out of a claim for rent and for damages for breach of covenant in respect of premises leased to the present appellant who issued a summons to have the writ set aside on the ground that at the material time he was a consular secretary at the German Embassy, London, and therefore immune from all writs and processes. An appeal from the Master's refusal to order the appellant to attend and be cross-examined with a view to establishing his right to diplomatic privilege was allowed by Mr. Justice SHEARMAN, and an appeal from this decision was dismissed by the Court of Appeal, the Master of the Rolls dissenting. In reversing the judgment of the Court of Appeal, Lord BUCKMASTER, referring to the appellant's contention that the statement of the Attorney-General, on the instructions of the Foreign Office, in respect of his status was conclusive in support of his privilege, said that if that statement were accepted the appellant would be entitled to the privilege he claimed. Although that statement had not been held to be binding in the Court below, he (Lord BUCKMASTER) accepted it. This method of proving status was clearly laid down in *Duff Development Company* v. *The Government of Kelantan*, 68 SOL. J. 559; 1924, A.C. 797, to be the same as that employed in the present case, and the same principle was upheld in *Macartney* v. *Gorbatt*, 24 Q.B.D. 368, and *The Parlement Belge*, 3 P.D. 197. There is thus abundant authority to support the view that the Attorney-General's statement of the status of an Embassy official should be accepted by the Court as conclusive. This principle, however, is in direct conflict with a matter which has been exercising judicial minds of recent years, namely, that judicial authority ought not to be vested absolutely in any Government department. Lord Justice SCRUTTON, in his judgment in the Court of Appeal in the present case (*Engelke* v. *Musmann*), said: "To say that a British subject, suing on a British contract, is to be deprived of his right to enforce his contract in a British court because a department of the Government holding an inquiry not on oath and at which the plaintiff is not represented has arrived at a conclusion that the defendant has immunity from process, and without being asked by the court for information, instructs the Attorney-General to inform the court of the conclusion at which the department has arrived, without the plaintiff having an opportunity of questioning the decision or ascertaining the facts for himself, in my opinion is a most unsatisfactory position and not warranted by any authority." The inequitable results which would follow the abuse of the privilege, and it was of the essence of all privilege that it might be abused, said Lord BUCKMASTER, was not overlooked in the House of Lords, but the privilege depends on maintaining the obligations of international law and the comity of nations, and it would be unfortunate if the immunity afforded by the Crown could be disregarded by the judiciary.

## Solicitors and The Vacation.

THE Long Vacation has once more returned to us, bringing to the lawyer the long-looked-for and much-needed rest, with prospects of many a pleasant day and week to be spent far away from business haunts and their accompanying worry and strife.

The machinery of the law, as well as of many another necessary institution, is not, however, arrested wholly in its course during the next ten weeks, nor, indeed, in the present advanced state and demands of society would it be possible or expedient to attempt such a present-day novel and wholesale suspension of legal proceedings.

Times are changed, for, it is well within the recollection of elderly practitioners when Vacation Courts were unknown, and when a private visit to a judge, if one could be found available, was the only means of obtaining immediate redress in cases of urgency.

Judges and barristers, it is true, are still free to depart if they will (with the exception of those of them who control the work in the weekly Vacation Court), and we probably hear no more of them till the fog and cold of approaching winter remind them that the respite from work is over and that it is time once more to buckle on their legal harness.

With solicitors it is very different. The varied and peculiar nature of their business prevents them from closing their office doors at will, in the sense of emancipating themselves for the entire "Long." They have to content themselves with a shorter holiday of perhaps only a few weeks' duration, though those of the fraternity who happen to be in partnership or to have responsible managers are in the happy position of being able to leave their work in other hands and thus spin out their holidays without let or hindrance to them or their clients.

Whilst on the question of solicitors, we are reminded that for all intents and purposes they consist of two distinct classes, the London solicitor and the country solicitor. The former may well look with envy at times on his country brother. How different the practice, how different the associations, how different the very life of the one compared with the other. It needs no pen to describe the difference. The profession as a body can almost picture to itself the life of each individual member, according to the town or locality where his sphere of action lies.

We spoke just now of envy, and we think we were not far wrong in the utterance. There is indeed some redeeming feature from tape and parchment to the average country solicitor in the very fact that he is a country solicitor, and (setting aside for the moment those men whose vocations are in one or other of our large provincial centres) the country life and rural surroundings of such a one are ever present with him, and the man thus happily situated pursues his duties and the even tenor of his ways undisturbed by that incessant turmoil and that constant excitement to brain and nerve which tend to take so much out of the professional man in overcrowded cities. And then, what countless opportunities present themselves to the country practitioner for enjoyment of a health-giving nature, especially if, as is so often the case, his inclinations and recreations lie in the direction of sport, whether by flood or field.

The Londoner knows but little of these things, and must be content forsooth with snatching whiffs of pure air when and how he can during the greater part of the year.

But after all, the Long Vacation is the grand time of all others when the faded and worn-out Londoner, be he lawyer or not, has a spell of rest from his daily and weekly labours with their often wearisome routine, and is able to obtain change of air, of scene and ideas. He thoroughly deserves all these, and we say so in all sincerity.

The hard workers of the legal profession do not end here. There is still another body of men intimately and closely allied with the law and its environment, and for whom not a little interest and sympathy may be felt. What would a lawyer's office be without its clerks, be they managers or

subordinates? And surely, what man in London earns his holidays more thoroughly than does a lawyer's clerk? Long hours and close application to work tell upon everyone towards the end of a year, and we have only to scan the faces of some of the employés in large offices to know how much they need the long-looked-for holiday. It is greatly to be feared that these same holidays are all too short, and that due consideration is not always given to the requirements of a very deserving and estimable body of men.

One of the compensations to any hard worker is the Autumn holiday, with its many influences for good and its freedom from care, the relaxation being the more essential in the case of anyone engaged in mental work and worry such as the lawyer and his assistants are. The Long Vacation, therefore, should not be a mere myth and a delusion to those who most stand in need of it; it is a time-honoured institution and should be participated in and enjoyed by one and all of the members of the great legal brotherhood.

## Oscar Slater.

THE Scottish system of criminal jurisprudence has long been regarded as one of the best that could be devised in the interests of justice. The Lord Advocate for Scotland, representing the Crown in prosecution for crime, has been rarely known in modern times to deviate from the rule that every accused person ought to have the fairest trial, abstaining from all prejudicial efforts or appeals to judge or jury for conviction. But mistakes can be made under the best systems, and following the English Act admitting of appeals in serious criminal cases a Court of Criminal Review was recently set up in Scotland. The conviction and sentence of OSCAR SLATER for the murder of an old lady in Glasgow occurred long prior to the passing of the Scottish Criminal Appeal Act, 1926. On account of the persistent and grave criticism to which the proceedings in his trial were subjected, Parliament made special provision for his case to be submitted to this Review Tribunal. The Government of the day were not happy over the result of the trial and commuted the death sentence to one of life imprisonment. SLATER, conforming to the rules of prison discipline, after confinement as a convict for nearly twenty years, was released a few months ago. There were at least two serious grounds of attack upon the trial procedure, *first*, in the method of identification pursued by the criminal authorities, both in this country and in New York, to which SLATER had gone after the date of the murder, with the witnesses adduced as swearing to SLATER being seen in or near the victim's house at the time of her murder; and *second* in the nature of the arguments presented by Lord Advocate URE (afterwards Lord President STRATHCLYDE) in his address to the jury in support of conviction. It was open, however, to the defending counsel to press his objections at the trial to the identification procedure; and, if this had been the sole ground, it is clear that with the additional evidence adduced in the appeal, the verdict and sentence would not have been set aside.

Any trial for murder needs a strong judge able to dissociate himself for the time being from any personal views he may hold on such questions as purity or temperance. Unfortunately the late Lord GUTHRIE, who tried the case, was not a forceful judge, able to control the conduct of a trial such as SLATER's proved. SLATER did not put his character in issue, and in fair pleading his reputation, which was otherwise bad, ought not to have come before the jury. One or two of the witnesses called on his behalf gave some awkward information to the Lord Advocate as to his mode of living and somehow seduced the Lord Advocate into submitting the very unfortunate, illogical and wholly irregular argument that a man so living was capable of the worst of crimes. Instead of condemning such a theme and asking the jury to disregard it, the judge made matters worse by evincing his detestation of ill-living, and in fact misdirected the jury. Not all of the jury accepted his views. It was only by a majority that SLATER was convicted. In the hearing of the appeal before five judges, presided over by Lord President CLYDE, the Lord Advocate, the Hon. WILLIAM WATSON, K.C., Member of Parliament for Carlisle, and one who has distinguished himself for his great ability and fairness in the discharge of his duties as first Scottish Law Officer for the Crown in the present administration, did not attempt to defend the abuse, however unintentional, by Lord Advocate URE of his functions as prosecuting counsel.

In the result, it is not, therefore, surprising that the court set aside the conviction of SLATER. It follows that his sentence, being irregular, compensation will naturally be claimed by SLATER in respect of his long imprisonment. He cannot possibly be tried again, and his innocence of the crime must be accepted, without any suggestion of doubt.

It is obvious that the police in SLATER's case, having made too hasty and unfounded presumptions of guilt against him, persevered in running him down, instead of looking in other directions for the real criminal. The pity is that even if that individual be now alive, he (presumably a man) cannot now be arrested and tried. By Scottish law, no one is the least likely to be tried after two decades have passed since the commission of the alleged crime. The decision involves the most salutary lessons for all engaged, from the police upwards, in the administration of justice in the criminal side, and that is to see that every person suspected of crime is treated from first to last with absolute fairness, and if any mistake is made by the police or other criminal officers that they are quick to acknowledge it before it is too late. Scottish lawyers must be congratulated upon the courage with which, after so long a delay, the wrong done to SLATER has been judicially affirmed.

## Legal Parables.

### IV.

### The Parliamentary Draftsman.

THERE was once an inexperienced but painstaking draftsman. And to him was entrusted the drafting of an important Parliamentary Bill. And lo, he prepared it with great care and re-wrote it several times until it became a model of such simple English that it could be comprehended by all. And he delivered it with great pride to the member of Parliament responsible for the measure.

The Bill was amended on Second Reading and altered in Committee and adjusted on the Report Stage and altered again on Third Reading. And when it went to the Lords it suffered further alteration and amendments until when it finally became an Act of Parliament, lo it had barely one sentence in it that had been drafted by the painstaking parliamentary draftsman.

And the draftsman was exceeding wrath. And he sought out an old and experienced member of the Bar and related the story of his Bill to him. "Verily," he said, "do both Bench and the General Public complain of the difficulty of understanding Acts of Parliament. Did not I set out this measure with exceeding clarity and brevity and is it not now by reason of so much amendment and alteration like unto a patchwork quilt?"

But the experienced barrister smiled and replied, "Verily, you speak the truth. But be not dismayed. Acts of Parliament were never intended to be clear. For, peradventure, if they were, there would be a lean time for Barristers, and the publishers of Law Books and Law Reports would soon go out of business. Reflect not upon the mutilation of thy cherished Bill, but resolve that next time thou wilt make it so unintelligible that it will not need amendment or alteration."

However an Act of Parliament is first conceived it always eventually attains the same condition of incomprehensibility.

"BARON."

# The Legal Aspect of Group Insurance.

By Mr. GILBERT STONE, B.A., LL.B., Barrister-at-Law.

(*Continued from p.* 496.)

Any merits the scheme has from a social point of view will quite clearly be dependent upon the way in which claims are settled, for it is a truism that in matters of this order ten claims paid do not do as much good as one claim refused, as the average man may think unfairly, do harm, and accordingly it is very desirable that the nature of the cover should be perfectly clear, so that no two opinions can arise as to whether or not a claim is valid.

As regards death, that is a matter about which there is generally no doubt. As regards disability, that must be a matter of definition. The definition contained in one scheme, while excellent so far as a definition, may perhaps give rise to questions in consequence of the use of the word "accelerated." The definition is as follows:—

(1) Lost by physical severance of both hands and feet, or one hand and foot; or

(2) Permanent total loss of both eyes; or

(3) Permanent disablement (not included in the foregoing), whether mental or physical, causing total inability to earn wages or remuneration on any work whatever which the assured is or may be likely to obtain, provided the disability occurs within Great Britain, Ireland, the Channel Islands, or the Isle of Man, and before age sixty, and is not intentionally self-inflicted or occasioned or accelerated by (*a*) intemperance, narcotics, or drugs or venereal disease, (*b*) by engaging or being employed in hunting, steeplechasing, polo, football, mountaineering, racing of any kind, or reliability or speed trials; or (*c*) by any unlawful act on the part of the assured other than an act of ordinary (as distinct from gross) negligence.

If that definition is critically considered, with special reference to the use of the word accelerated, it will be seen that a number of nice arguments as to the width of the cover can be founded. It is especially desirable, in an insurance of this kind, where failure to pay claims will not only cause dispute between office and assured, but trouble between employer and employee, that nice arguments should be eliminated as far as possible.

The definition has some minor interest, in that it apparently contemplates that there is a substantial difference between ordinary and gross negligence. The nature of that difference has been sought by many judges in the past without any great success. It is not, however, the purpose of this article to place the microscope to the terms of a particular policy, but rather to indicate the importance of having such policies as definite and simple as the nature of the case will allow.

When we enquire as to the legal remedies, if any, which an employee (as distinct from his employer, the assured) has under such a scheme, it is necessary to observe that such a person is not contractually bound in any way to the office. The position is not unlike that which arises in the case of the ordinary tariff office motor car insurance, such policies providing an indemnity not only for the assured (the owner of the car) but also for third party drivers who drive with the assured's consent in the case of accidents arising while such third party is driving, against claims which the persons injured in such accident may bring against such driver.

In such a case it will be seen that office A contracts with B to indemnify C in a certain event, even as under group insurance the office A contracts with employer B to pay a sum to C in a certain event. In *Williams* v. *Baltic Insurance Co.*, 1924, 2 K.B. 282, the case arose where C had a claim made against her while driving B's car that was insured with A. In that case B sued A for the benefit of C and recovered, it being held that A was liable to pay to B the amount of the indemnity in question as trustee for C. It will thus be seen that the right to sue resides in B, not in C.

If C was a contributory, it would appear that C could compel B to sue A as a person having an interest in the policy in question. The position is more difficult, however, if C is not a contributory, for in such a case there appears to be no duty between C and B or between C and A, no agency, express or implied, though, clearly, if in fact B does recover from A, he recovers as trustee for C as in the case of the motor car policy above mentioned.

It will therefore be seen that the employee who may desire to enforce his rights would have to go *via* the employer against the office. Interesting and important questions consequently arise should, at the critical moment, the employer go into bankruptcy or into liquidation. In this connexion the recent case of *In re Harrington Motor Co.*, 1928, 1 Ch. 105, should not be overlooked.

The questions that here arises can be formulated thus: Where the employee dies on 1st January and the employer goes into bankruptcy on 2nd January, can the trustee in bankruptcy claim from the office the whole amount payable in respect of the death, but treat the dependants of the employee as creditors of that amount entitled to a dividend only? Or does the trustee act merely as a conduit pipe for the transfer from the office to the dependants of the employee of a sum equal to the amount payable in the event that has happened? If the former is the correct view, then clearly the employee's protection may depend upon the employer's solvency.

As regards the question of insurable interest, it will be seen that the scheme of group insurance involves questions which have not hitherto arisen in this country on the construction of the Insurance Act of 1774, but there can hardly be any doubt that, properly considered, there is here no absence of sufficient insurable interest.

In truth one is not here dealing with life insurance as defined in *Dalby's Case*, 1854, 15 C.B. 365, viz.: "a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity (the premium) for his life," for group insurance is effected on the basis of an insurance for a year, and lives come in and go out of the equation and the cover. It is therefore apparent that the *quantum* recoverable in any given case in respect of the death or disablement of any given person does not, under the provisions of the above Act, depend on the interest the assured (the employer) had in *that* life at the time of effecting the insurance, but on the interest he had in the scheduled lives at the time of effecting the insurance.

It is this consideration which renders the interest sufficient adequately to support the insurances, for s. 3 provided: "in all cases where the insured hath interest in such life or lives, event or events, no sum shall be recovered or received from the insurer than the amount or value of the interest of the assured in the life or lives or other event or events." From this it might follow, were the insurance by an employer of the life of one employee, that no more could be recovered than the interest the employer had in the employee's life and this would vary according to wage and the length of notice the employer would be legally obliged to give or receive in order to terminate the employment: *Simcock's Case*, 1902, 10 S.L.T. 288, though possibly the court would not be astute to enquire into *quantum* of interest if the policy expressly provided that no further proof of interest could be required: *Turnbull's Case*, 1896, 37 S.L.R. 16.

As, however, under group insurance the employer is insuring a number of employees, the *quantum* of the amount recoverable by him on the happening of an event insured against, e.g., the death of A, is not the assured's interest in A but his interest in all the employees comprising the group, and this, in the case of ordinary workpeople and with a group of 100, would appear to be approximately two years' wage of an

average wage-earner. Further, this is not a case of an employer insuring the same employee with several offices (in which case owing to the decision in *Simcock's Case*, it might well be that the earlier insurances having covered the total interest, there is no interest left to support the later insurances), but a case of the employer insuring several employees with the same office. The only possible doubt that could arise would therefore seem to be whether if events occur in any one year which, together, exhaust the interest possessed by the employer at the time of effecting the insurance in all the employees a later claim could be supported, for the total interest being £*x* and the assured having recovered under the particular policy claims amounting to £*x*, s. 3 might be invoked as a defence to further claims. Whether it would be so invoked is a very different question. It might indeed be said that such a defence is inconceivable, and the point becomes therefore merely academic.

Experience in America appears to show that group insurance is a sound and workable system. That it tends to better relations between employers and employed can hardly be doubted, and that fact, in these days, is one of great moment, and one that makes the development and extension of this form of insurance highly desirable.

## A Conveyancer's Diary.

**Succession of Legitimated Persons.**

In view of recent important changes, it may be useful to consider briefly the subject of legitimacy for the purpose of succession to property situated in the United Kingdom. We shall deal firstly with the law as it was before the recent legislation, and then proceed to consider the changes recently effected.

*Old Law: Realty.*

(*a*) As far as succession *on intestacy* to English realty was concerned, it was established in *Birtwhistle* v. *Vardill*, 5 B. and C. 438, 7 Cl. and F. 851, that the heir must be legitimate according to English internal law, i.e., he must have been born in wedlock. In that case it was held that the eldest son born in Scotland of unmarried parents domiciled there and who afterwards intermarried there, was not by such marriage rendered capable of inheriting freehold land in England, though legitimated *per subsequens matrimonium* according to Scotch law.

(*b*) As regards succession to English realty *under a will*, *Re Grey's Trusts*, 1892, 3 Ch. D. 88, decided that the rule in *Birtwhistle* v. *Vardill* had no application here, and that it was sufficient if the post-legitimate complied with the rules laid down in *Re Grove*, *infra*. Accordingly, STIRLING, J., held that a devise to "children" included a post-legitimate.

*Old Law: Chattels Personal.*

As regards succession to chattels personal, both on intestacy and under a will, the rule was laid down (though not for the first time) in *Re Grove: Vaucher* v. *Treasury*, 1888, 40 Ch. D. 216: "That a child born before marriage cannot be legitimated by subsequent marriage unless the father was domiciled in a country whose laws allowed such legitimation, *both* at the time of the marriage . . . *and* at the time of the birth." The cases illustrating this fall under two heads:—

(i) *Succession on Intestacy*: In *Re Grove*, *supra*, where a man, living in England but domiciled in Geneva (where egitimation *per subsequens matrimonium* was recognised), became the father of an illegitimate child, and later (after acquiring an English domicil) married the child's mother, the English court held that the child had not been legitimated, and therefore could not take personalty on intestacy as next of kin. See also *Re Goodman's Trusts*, 17 Ch. D. 266.

(ii) *Succession under a Will*: In *Re Andros*, 1883, 24 Ch. D. 637, it was held that the son of a man domiciled in Guernsey, born before wedlock but legitimated according to the law of Guernsey by the subsequent intermarriage of his parents, could share in a bequest to the "sons" of his father.

*Old Law: Chattels Real.*

The law in this connexion was not settled, but the view generally held was that the rule in *Birtwhistle* v. *Vardill* had no application to chattels real, and that it was sufficient if the child were legitimated as required by *Re Grove*, *vide* JAMES, L.J., in *Re Goodman's Trusts*, *supra*, at p. 299.

*New Law: Ad. of E.A.* 1925.

Sections 45 to 52 of the Administration of Estates Act, 1925, introduced a new form of succession on intestacy in common for both realty and personalty. Heirship being thus practically abolished, it appears that the rule in *Birtwhistle* v. *Vardill* can have no application to intestate succession under the new Act, so that the post-legitimate within the meaning of *Re Grove* will rank with children born in wedlock not only as to personalty, as formerly, but also as to realty.

But before the passing of the Legitimacy Act, *infra*, the old law still obtained in one case, viz., estates tail. The "heirs" or "heirs of the body" to take under the grant would still apparently be determined by the old law, which required them to be born in wedlock. And, since entailed interests can now be created in any kind of property, it appears that succession to an equitable entail of movables also required an heir born in wedlock.

*New Law: Legitimacy Act*, 1926.

The principle of legitimation *per subsequens matrimonium* was made a part of English internal law by this Act:—

Section 1 (1) provides, that if the father of an illegitimate is domiciled in England or Wales when he marries the child's mother, the child shall be legitimated from the date of the Act or from the date of the marriage, whichever happens last. By s. 8 (1) the same result eventuates where the putative father is at the date of the marriage domiciled in some foreign country where legitimation *per subsequens matrimonium* is recognised. And, by s. 3 (1), a legitimated person, together with his spouse, children, and remoter issue are entitled to succeed (*a*) on any intestacy after the date of legitimation, (*b*) under any disposition coming into operation after that date, (*c*) by descent under an entailed interest created after that date, in the same manner as if they have been born legitimate.

It is to be borne in mind throughout, however, that if the question of seniority arises, legitimated persons will only take after a legitimate child born after them, but before the date of legitimation: Legitimacy Act, 1925, s. 3 (2).

The cumulative effect of these sub-sections is clearly to abolish one of the rules laid down in *Re Grove*, *ante*. In future it is sufficient if *at the date of the marriage* the father be domiciled in a country allowing legitimation *per subsequens matrimonium*, regardless of his domicil at the child's birth.

The provision as to entailed interests should be noted in view of what we have said above as to the *Birtwhistle* v. *Vardill* principle still applying under the New Property legislation. It follows from s. 3 (1) (*c*) that this principle no longer obtains with regard to entailed interests created after the date of legitimation, though to succeed to entailed interests created before that date the "heir" must apparently still be born in wedlock.

Section 4 nullifies the decision in *Re Don*, 1857, 4 Drew, 194, where it was held that if a post-legitimate died intestate, his father could not succeed as his heir. It provides that on such intestacy, "the same persons shall be entitled to take . . . as would have been entitled to take if the legitimated person had been born legitimate."

In conclusion, it should be noted that a pure illegitimate can now succeed on intestacy in one case, for by s. 9 (1), where the mother of an illegitimate child dies intestate and leaves no legitimate issue surviving, the illegitimate can succeed to her realty and personalty in the same manner as if he had been born legitimate.

# Landlord and Tenant Notebook.

**Decontrol. Recent Decisions of the Court of Appeal.**

The decisions in the five appeals recently considered by the Court of Appeal, viz., *Lloyd* v. *Cook*, *Goudge* v. *Broughton*, *Simson* v. *Miatt*, *Bartram* v. *Brown and Others*, and *Barker* v. *Hutson* (72 SOL. J. pp. 532-34, will go a long way in helping to clear away the fog that has for a long time past been obscuring the true meaning of the decontrolling provisions contained in s. 2 of the Rent and Mortgage Interest Restrictions Act, 1923.

In cases of doubt the object with which any statutory provision has been passed will be of material assistance in arriving at the correct meaning of the provision in question, and in construing s. 2 of the Rent and Mortgage Interest Restrictions Act, 1923, it would be as well to remember that the object of that Act was, in part, if one may adopt the language of Lord Justice Scrutton in the above appeals, "at a time when rent restrictions was supposed to be drawing at an end owing to increased production of houses, gradually to decontrol in cases where existing vested interests had come to an end by the owners or landlords having or obtaining vacant possession on or after July, 1923, but not to allow a tenant to obtain freedom to profiteer by sub-letting while his landlord was bound to him by the Acts."

**Principles Affecting Decontrol.**

The propositions of law that are laid down by the above cases as far as we understand them appear to be as follows:—

1. Once premises are decontrolled, they and every part of them are decontrolled for all time. Therefore, on a subsequent letting of a *part* only of the decontrolled premises that part will not be the subject of control.

The conflict of authority hitherto existing between such cases as *Lloyd* v. *Cook* and *Cohen* v. *Gold*, 1927, 1 K.B. 865, on the one hand, and *Ratkinsky* v. *Jacobs*, 44 T.L.R. 548, on the other, must now be regarded as having been definitely settled in favour of the view expressed in the latter decision.

2. Where, therefore, a landlord comes into possession of the whole of a dwelling-house in such circumstances as to decontrol it and subsequently lets a part of the house, that part will equally be decontrolled, and it is not necessary in such a case to show that the part in question was previously let as a dwelling-house.

This second principle may therefore be regarded as overruling *Lloyd* v. *Cook*.

3. Where a "landlord" is in possession of a dwelling-house after the 31st July, 1923, or other material date, the whole house and every part thereof is decontrolled, and it is immaterial in such a case whether there has been any previous letting at all by the landlord.

Thus such cases as *Cohen* v. *Gold* will no longer be followed. That case, it will be remembered, decided that where an assignee of a long lease has been in possession of a whole house at the passing of the Act of 1923 and subsequently lets a part for the first time, that part is not decontrolled, because the previous possession of the assignee was not in the nature of possession *as landlord*.

4. Where a landlord comes into possession of part of a dwelling-house, the remainder being in the lawful possession of a statutory sub-tenant who holds under the tenant of the landlord while the former part of the premises is decontrolled, the latter is not (s. 2 (1) proviso of the Act of 1923).

5. Where a tenant sub-lets part of the premises and subsequently comes into possession of that part, that part still remains controlled (s. 2 (1) proviso of the Rent and Mortgage Interest Restrictions Act, 1923).

The other points raised in the above appeals as to who is a "landlord" and as to the effect of s. 2 (2) will be considered in a later article.

*(To be continued.)*

# Our County Court Letter.

## FAKED ANTIQUES.

AN instructive story to holiday-makers was narrated in *Isaacs* v. *Rowe*, one of the last cases tried at Burton-on-Trent by His Honour Judge NEWELL before his recent transference from law to business. The plaintiff claimed £20 as (*a*) the price paid for three china figures in consequence of a false and fraudulent misrepresentation by the defendant that they were old Chelsea ware, and (*b*) alternatively as damages for breach of warranty. The plaintiff first saw the figures, bearing the Chelsea mark, at the house of the defendant, who claimed to have been told by an art expert that the figures were genuine. The same evening the defendant visited the plaintiff's shop, with a receipt already written for £20, and sold the figures to the plaintiff for that sum. The art expert gave evidence for the plaintiff, and said that he inspected the figures last November, but told the defendant that they were modern. The Chelsea period was from 1740 to 1770, when the Derby china factory acquired the business, and although the Chelsea was one of the rarest marks, there were very many forgeries. The marks in question were forged, and the ornaments were worth from 25s. to 30s. each. A collector of twenty-five years' experience corroborated, and said that the china was probably of French origin and sent for sale to English seaside resorts. His Honour held, on a submission as to absence of fraud, that when a proficient witness told the defendant that the figures were modern and not Chelsea, yet the defendant sold them as such, it was clear that the plaintiff had not received what he thought he was purchasing. The defendant's evidence was that on a fishing expedition he went for lunch to a little cottage near Uttoxeter. The cottager showed him the ornaments, and represented them as genuine Chelsea china ware, which he had bought from a friend in need of money. Having no experience or knowledge of Chelsea ware, the defendant bought the ornaments for £7 10s., and never having been informed to the contrary he believed the figures to be genuine. His Honour held that the Chelsea marks were forgeries, and gave judgment for the plaintiff, with costs.

The difficulties of the above type of litigation were illustrated in *Shrager* v. *Basil Dighton, Ltd., and Others*, 1924, 1 K.B. 274. The plaintiff claimed (*a*) damages for fraudulent misrepresentations and breaches of warranty of quality and description relating to 500 pieces of furniture, and (*b*) the return of £85,284 paid on account, and a declaration that he was not liable for a further balance of £25,000. The defendants denied the allegations, and counter-claimed the latter sum, and on 14th November, 1922, the case came on for trial before the Lord Chief Justice and a special jury. On 17th November the action was referred, and on 28th November in default of agreement as to the referee the learned judge made an order for trial by an official referee. The trial occupied twenty-five days, viz., from 22nd January to 26th February, 1923, before Sir EDWARD POLLOCK, who gave judgment for the defendants on the claim and also on the counter-claim for £25,764 16s. 8d. There was an appeal to the Divisional Court, and then to the Court of Appeal, with reference to an irregularity in the mode of reference. It was held that this did not render the trial a nullity, but was one which would be waived by the parties, and that in the circumstances it had been waived by the plaintiff. After involving questions of fact only at the outset, the case therefore developed into a leading decision on jurisdiction and the interpretation of the Rules of the Supreme Court.

# Practice Notes.

## INSPECTION OF THIRD PERSON'S BANKING ACCOUNT.

THE "Francs Case," *Ironmonger* v. *Dyne*, has already occasioned the consideration by the courts of several important points of law, and it is interesting to note that yet another important point which arose in the course of this litigation was considered by the Court of Appeal on 24th May in *Ironmonger* v. *Dyne*.

That point was whether the plaintiffs were entitled to an order for inspection under the Bankers Books Evidence Act, 1879, of the banking accounts, not only of Mrs. DYNE, but also of her husband, who was not a party to the action.

It is quite clear from *Howard* v. *Beall*, 1889, 23 Q.B.D. 1, that power is given to the court by the Bankers Book Evidence Act, 1879, to order the inspection of entries in bankers' books relating to banking accounts kept in the names of other persons besides the parties to the actions, if such entries would be admissible in evidence at the trial or hearing of the action or other matter, but as was pointed out in *South Staffordshire Tramways Co.* v. *Ebbsmith*, 1895, 2 Q.B. 669, such a power must be exercised by the court with caution. The circumstances in which such an order will be generally made will be found very clearly stated in the judgment of Lord ESHER, M.R., in that case, although these circumstances are not to be regarded as exhaustive. Lord ESHER is reported as having said (1895, 2 Q.B., at pp. 674, 675): "I am disposed to think that the rule of conduct which the court would observe in relation to such an application—though it is impossible to define it exhaustively—would be that if the court were satisfied that in truth the account which purported to be that of a third person *was the account of the party to the action* against whom the order was applied for, or that *though not his account, it was one with which he was so much concerned* that items in it would be evidence against him at the trial, and there were no reasons for refusing inspection, then they might order the inspection, but unless they were so satisfied they ought not to do so" (cf. also *Pollock* v. *Garle*, 1898, 1 Ch. 1). The Court of Appeal decided that inasmuch as certain debit items in Mrs. DYNE'S account corresponded to a large extent with certain items which were transferred to her husband's account at about the same time, and a number of securities belonging to Mrs. DYNE were transferred to her husband's credit, the case was one which came within the above rule, and accordingly made an order for inspection.

It is important to note in connexion with the above case, the case of *Hood Barrs* v. *Heriot, ex parte Blyth*, 1896, 2 Q.B. 338, which decided that where an order is made for the examination as to means of a judgment debtor under Ord. 42, r. 32, there is no jurisdiction to make an order for the examination of any person, other than the judgment debtor, or, in the case of a corporation, other than an officer of the defendant corporation, and that the words "other person" in that rule (which provides for an order being made for the examination of "such debtor or of any other person") apply, not to persons other than the judgment debtor, but to officers of a corporation and the like.

The Court of Appeal do not appear to have dealt in terms with *Hood Barrs* v. *Heriot*, but this case is apparently to be distinguished on the ground that the application for inspection in *Ironmonger* v. *Dyne* was not made in relation to the application for examination of the judgment debtor as to means under Ord. 42, r. 32.



# Reviews.

*Stephen's Commentaries on the Laws of England.* Nineteenth Edition. General Editor: G. C. CHESHIRE. Consulting Editor: Sir JOHN MILES. In Four Volumes. Vol. I (Introduction, Courts and Procedure, and the Law of Persons) by F. H. LAWSON. pp. x, 385 and (Index) 35 Vol. II (The Law of Property) by G. C. CHESHIRE. pp. xiv, 593 and (Index) 58. Vol. III (The Law of Contracts and Torts) by G. C. CHESHIRE, CARLETON KEMP ALLEN and C. H. S. FIFOOT. pp. xxi, 585 and (Index) 56. Vol. IV (Criminal Law) by C. H. S. FIFOOT, (Constitutional and Administrative Law) by F. H. LAWSON. pp. xviii, 577 and (Index) 59. 1928. Butterworth & Co. (Publishers), Ltd. £6 6s. net.

The names of all those learned and experienced editors who were responsible for the seventeenth and eighteenth editions of "Stephen" do not appear on the title pages of the new edition. It is but natural, therefore, that anyone familiar with those editions should approach the new "Stephen" with somewhat mixed feelings. In particular, one must lament the disappearance of Professor Edward Jenks' name from the title page and the consequent cessation of his direct influence on the education and life of the coming generation of articled clerks.

As might be expected after such a thorough sweep, the new edition has been "radically revised and largely re-written." The first notable result of this process is a reduction in the number of pages in the four volumes from 2,753 to 2,141. Unfortunately there has been no corresponding shortening in the price of the new edition. When the four volumes of "Stephen" are compared with two such diverse works as the three volumes of "Prideaux" (about 3,000 for £6 6s.) and "Williams on Real Property" (832 pages for £1 10s.), one is forced to the conclusion that £6 6s. is far too high a price to expect articled clerks in the early stage of their training to pay for a compulsory text-book.

The re-arrangement of the subject-matter on the whole works out satisfactorily. One or two questions may, however, be raised. How far is it advisable to treat of evidence and procedure in Vol. I before the substantive law has been explained? Thus, on p. 211 of Vol. I references are made to the commission of a trespass upon land and the abatement of a nuisance, while trespass and nuisance are left to be explained in Vol. III. Again, incorporeal interests in land are dealt with before corporeal interests. Can a student be taught the implications of easements and profits before he is familiar with the incidents of an estate in fee simple?

Marginal notes (a most decided improvement) have been introduced, variations in type also constitute a new feature for "Stephen" and here and there footnotes make their *début*.

In the re-casting several familiar sections have been jettisoned: "Stephen" is no longer a commentary upon all the Laws of England. New matter has here and there been introduced. One wonders whether some of this new matter is not too difficult for intermediate students. Reference may be made, for one example of this, to the historical introduction in Vol. III, pp. 1-16. How many of those for whom the book is mainly intended can grasp the meaning of the statement that "the action of covenant was *stricti juris*"?

Both the revision and the re-writing have obviously been done with the greatest care. The law is stated with great accuracy throughout. Hardly a slip can be detected. But on pp. 189 and 193 of the first volume reference should have been made to the new Ord. XIVA. (The Preface is dated in April, 1928, the new Order was published in W.N., 7th January, 1928.) Applications under Ord. XIV are no longer of the rarest occurrence in the Chancery Division.

A good index and a separate table of cases to each volume are a great convenience in the use of the new "Stephen."

# POINTS IN PRACTICE.

**Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.**

**Agricultural Holdings**—Pasture Ploughed Up under War-time Order—Re-sown—Claim for Compensation.

*Q.* 1343. I am acting for the owner of agricultural land. His tenant is now making a claim against him for a sum of £21 for laying down temporary pasture in certain fields. These were broken up at the time of the late war by Order of the Board of Agriculture. I should be glad if you could inform me whether such claim is justifiable, and, if so, whether my client is entitled to claim a refund of this money from the Board of Agriculture. If the tenant is entitled to make such a claim at this date, should it not be made direct to the Board of Agriculture?

*A.* There appears to be no decision on the point raised. It is assumed that the land was ploughed up under notice given under s. 9 of the Corn Production Act, 1917. That section provided for securing to the landlord, if the Board of Agriculture thought fit, payment for profits to be derived by the tenant by reason of the suspension of the covenant against ploughing up pasture. The opinion is given that land ploughed up under notice given under authority of that section became arable land for the purpose of allowing a tenant to claim compensation for laying down temporary pasture, and that the claim cannot be resisted. If, however, what was sown was proper for a permanent pasture the landlord may escape payment on the ground that no written consent was given.

**Recovery of Tithe from Married Woman.**

*Q.* 1344. A.B. was the owner of a freehold farm, upon which there was an annual tithe payable. The farm was sold in lots for building and the tithe-owners apportioned the tithe on the various owners of the land. One of the owners of land is a married woman, and she erected a house thereon in which she resides with her husband. She neglected to pay 1s. 7d., being one year's tithe due to the 1st October, 1927. An order was obtained for this amount through the county court, and when the bailiff attended at the premises to distrain for the 1s. 7d. the goods at the house were claimed by the husband of the owner of the house and land. What remedy has the tithe-owner to recover the tithe? Can the goods of the husband be distrained on if in the house on the land from which the tithe issues?

*A.* On a report by the bailiff to the applicant and to the county court, under No. 24 of the Rules under the Tithe Act, 1891, that there is no sufficient distress, the tithe-owner's remedy is to obtain possession of the land under the Tithe Act, 1836, s. 82. The writ of inquiry thereunder is no longer necessary, as the county court will have assessed the amount, and the applicant must apply *ex parte* to a Master of the High Court on affidavit exhibiting a certified copy of the county court proceedings, and stating the sum due, and that there is no sufficient distress. The Master will then direct a writ of possession to issue from the King's Bench Division. Alternatively, if the bailiff will seize the goods, the husband and the applicant can obtain a decision on an inter-pleader issue in the county court. The goods of the husband (if proved to be such) cannot be distrained on in the house on the land, as the tithe-owner is an execution creditor and cannot seize the goods of strangers. Although the process is called distress, the tithe-owner's rights are not so extensive as those of a landlord: see "Everyday Points in Practice," p. 344.

**Mortgage by Deposit**—Effect of New Legislation.

*Q.* 1345. Did the transitional provisions of the L.P.A., 1925, convert a mortgage by deposit of title deeds (coupled with usual memorandum of deposit, which contained usual clause to execute legal mortgage on demand) into a legal term of years? According to the notes in "Prideaux Precedents," the transitional provisions did not affect such a mortgage, and that it is allowed to remain as an equitable charge. How is such opinion reconciled with Pt. VII of the 1st Sched. to the Act?

*A.* The provisions of the L.P.A., 1925, 1st Sched., Pt. VII, only apply to mortgagees who have an estate in the land, which, of course, must have been assured to them by deed. Mortgagees by deposit are therefore outside its provisions, but their rights are safeguarded by s. 13.

**Magistrates**—Practice and Procedure—Committal for Trial—Costs of Prosecution disallowed—How payable.

*Q.* 1346. A attended at the office of a magistrates' clerk with a police constable and laid an information alleging an offence under the Offences against the Person Act, 1861, against his (A's) wife. The accused was arrested and, on the application of B (the inspector of police) was remanded. Prior to the adjourned hearing it was suggested to B that in the event of a committal to quarter sessions the prosecution should be in his name, and B agreed. The accused was committed, and B was, with his consent, bound over to prosecute. The magistrates' clerk (who is not a solicitor) in pursuance of his usual practice in such cases, instructed C to conduct the prosecution at quarter sessions. It subsequently transpired that the chief constable objected to B acting as the prosecutor. On the trial at quarter sessions the accused was found not guilty and the Chairman disallowed the costs of the prosecution. An opinion is desired on the following points:—

(1) Did B become the prosecutor on being bound over to prosecute although he was not the original informant?

(2) Were the magistrates in order in binding over B to prosecute in the circumstances?

(3) Had the chief constable any right or authority to forbid B to act as prosecutor after he had been formally bound over?

(4) To whom should C look for payment of the costs of the prosecution?

(5) If B is liable as prosecutor, should application be made to the standing joint committee as the county police authority?

(6) If the magistrates had no power to bind over B to prosecute does the original informant remain the prosecutor although he was never bound over by the magistrates to prosecute?

*A.* (1) Yes. Section 9 (1) of the Costs in Criminal Cases Act, 1908, enacts that the expression "prosecutor" includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on. Both A and B are included in this definition.

(2) Yes.

(3) The validity of a recognizance of B to prosecute cannot be effected by any subsequent action of the chief constable.

(4) If the magistrates' clerk obtained B's authority to instruct C, on behalf of B, B is personally liable for C's costs.

B cannot very well take up the attitude that 'though it is true I did not instruct any one to prosecute and have therefore broken my recognizance, yet I neither instructed C nor adopted the magistrates' clerk's action in so doing. It may possibly be held that by misconduct at the trial, he adopted the clerk's action. Otherwise the clerk remains liable to C, either on the instructions he gave or on the misirepresentation of his authority to give those instructions on B's behalf.

(5) B may be personally liable even if he acted contrary to instructions. The standing joint committee have the power to defray these expenses. If the facts of the case are properly brought before quarter sessions, an order for payment of the costs of the prosecution ought to be made without resorting to a mandamus.

(6) The question of the original informant being included within the statutory definition of " prosecutor " is not material, as he did not carry on the prosecution after the committal for trial.

**Partnership**—Sale by Surviving Partners.

*Q.* 1347. Adverting to *Q.* No. 1328, a further difficulty has arisen, and it is now contended for the purchaser of Blackacre from the four surviving partners that the conveyance of 1917 made the partners tenants in common at law and not joint tenants, as was previously assumed.

(1) Was the effect of the conveyance of 1917 to make the partners joint tenants or tenants in common of the legal estate ?

(2) If there was originally a tenancy in common, does para. 1 (1) or 1 (4) of Sched. I, Pt. IV, of L.P.A., 1925, apply? Can E's fiduciary shares be said to be " vested in possession " ?

(3) Is it correct that, although the property was dealt with in the deed of 1919 as being held on a joint tenancy, this was not sufficient to get in the one-seventh share outstanding in the personal representative of B deceased ?

(4) Is an appointment of new trustees in the place of the Public Trustee necessary ?

(5) What form should the conveyance take ? Should the personal representative of the deceased partners join to release the property ?

*A.* (1) The conveyance of 1917 vested Blackacre in A, B, C, D, E, F and G as joint tenants at law. " It is an invariable rule at law that, when purchasers take a conveyance to themselves and their heirs, they will be joint tenants " (White and Tudor's " Leading Cases in Equity," 8th ed., Vol. II, p. 978, citing Litt., s. 280). A conveyance to purchasers in fee simple is equivalent to a conveyance to them and their heirs. The same rule prevails in equity, yet, if it can be inferred that the intention of the parties was that a joint tenancy should not exist, equity will decree a tenancy in common—e.g., in the case of a purchase for partnership purposes. The mere addition of such words as " as part of their partnership property " could not create a tenancy in common at law, being too vague and not indicating the shares. The object of these words is to make it clear that the property was purchased as partnership property, for not every purchase by partners is or need be partnership property (*vide* judgment of Turner, J., in *The Bank of England Case ; ex parte McKenna*, 3 De G.F. & J. 615). Reference should also be made to s. 20 (2) of the Partnership Act, 1890.

(2) *Cadit quæstio.* We would observe that the fact that some of E's shares were fiduciary would not have affected the position had there been a tenancy in common and that the shares must be " in possession " whether para. 1 (1) or (2) or (3) or (4) is applicable.

(3) There was no outstanding legal estate in B's representative.

(4) No.

(5) The vendors, A, D, E and G, should sell alone under the statutory trusts, and it is not necessary, or desirable, for E to concur in his capacity as personal representative of the deceased partners.

# NOTES OF CASES.

## Court of Appeal.

**Bartram** *v.* **Brown and Others.** 17th July.

Landlord and Tenant—Dwelling-house—Rent Restrictions—Decontrol—Grant of Lease to the Tenant—Sitting Tenant—Rent and Mortgage Interest Restrictions Act, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (2).

Appeal from the Divisional Court, 44 T.L.R. 572. The plaintiff claimed damages for alleged illegal distress. In March, 1922, the defendant Mr. Cecil Brown, since deceased, and his wife took over the residue of a long lease of premises known as 32, Stroud Green Road, Finsbury Park, N. In May ,1923, Mr. and Mrs. Brown sub-let the whole of the premises to a Mr. Griss for a term of twenty-two years from 25th March, 1923. The contract between Mr. and Mrs. Brown and Mr. Griss contained a prohibition against sub-letting without first obtaining the lessor's consent, but Mr. Griss, in May, 1923, sub-let two rooms on the top floor of the premises to a Mrs. Simpson, without having first obtained the consent required by the contract, and shortly afterwards disappeared from the premises, Mrs. Simpson remaining in possession of her two rooms. Mr. Griss never paid any rent. In September, 1925, Mr. and Mrs. Brown sub-let the whole of the premises to a Mr. Redman for a period of twenty-one and a quarter years, at a rent rising from £150 to £160 a year, and Mr. Redman took over Mrs. Simpson as sub-tenant. Early in 1916 Mr. Redman gave up possession, and in June, 1926, Mr. and Mrs. Brown sub-let the premises to the plaintiff, Mr. Frank Bartram, on a yearly tenancy at a rent of £160 a year. Mr. Bartram subsequently got into arrear with his rent, and in August, 1927, Mr. Brown caused a distress to be levied on the premises. No leave had been obtained from the court for the levying of that distress, and Mr. Bartram subsequently brought an action against Mr. Brown and the sheriff's officers for illegal distress. The plaintiff contended that the premises were protected by the Rent Restrictions Acts, and that no leave for levying a distress had been obtained from the court as required by s. 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and that therefore the distress was illegal. The defendants, on the other hand, contended that the premises had been decontrolled under s. 2 (2) of the Rent and Mortgage Interest Restrictions Act, 1923, by reason of the long lease granted by the Browns to Mr. Redman in September, 1923. The county court judge held that the words " grants to the tenant a valid lease " in s. 2 (2) must be construed as " grants to the sitting tenant a valid lease," that a lease to a person who was not already tenant of the premises could not effect decontrol, and that therefore the premises continued to be protected under the Rent Restrictions Acts. He, accordingly, gave judgment for the plaintiff for £35, the agreed amount of the damages. Section 2 (2) of the Act of 1923 provided that: " Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending . . . after the 24th June, 1926, being a term of not less than two years, or enters into a valid agreement . . . for a tenancy for such a term " the rent Acts shall cease to apply to the dwelling-house. The Divisional Court affirmed the decision of the county court judge. The defendants appealed.

The Court (Scrutton, Greer and Sankey, L.JJ.) dismissed the appeal. The word " tenant " in s. 2 (2) of the Act of 1923 meant the sitting tenant, i.e., the particular person who was the tenant at the time when the lease referred to in the sub-section was granted, and no other person. Appeal dismissed.

Counsel: *Croom-Johnson*, K.C., and *J. H. Critchley ; Phineas Quass.*

Solicitors: *Alfred Double & Sons ; Henniker Rance & Co.*

[Reported by T. W. Morgan, Esq., Barrister-at-Law.]

**Lloyd** *v.* **Cook.** 17th July.

LANDLORD AND TENANT—RENT RESTRICTIONS—DWELLING-HOUSE—DE-CONTROL—ACTUAL POSSESSION BY LANDLORD—SUBSEQUENT LETTING OF PART—DE-CONTROL *in rem*—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

Appeal from the Divisional Court, 44 T.L.R. 455.

The respondent, Mrs. Kate Cook, was the holder of a ninety-nine years' lease of premises known as 14 Eversholt-street, Camden Town, N.W.1. Three rooms on the third floor of that house had been let to a Mr. Churchman, who vacated possession on 12th August, 1926. Mrs. Cook thereupon prepared one of those rooms for the use of her son, who came in and occupied it as soon as it was ready. She had the other two whitewashed and papered with a view to another letting. On 28th August, 1926, she let those two rooms on a weekly tenancy at a rent of 14s. a week to the appellant, Mr. Frederick Charles Lloyd. Mr. Lloyd applied to the registrar to have the standard rent of his rooms fixed by an apportionment of the rent of the whole house on the ground that his rooms constituted a "dwelling-house" protected by the Rent Restrictions Acts. The registrar granted the application, and fixed the standard rent at 5s. 8d. a week, but the county court judge reversed that decision on appeal, and held that Mr. Lloyd's rooms were no longer protected by the Acts, having become de-controlled by virtue of s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923. That section states: "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act (i.e., 31st July, 1923) or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house . . ." The Divisional Court held that, notwithstanding the de-control of the three rooms, the subsequent letting of two of those rooms to Mr. Lloyd as a separate dwelling-house on a fresh tenancy was not outside the protection of the Rent Restrictions Acts, and that the tenant was entitled to an apportionment. The landlord appealed.

The Court (SCRUTTON, GREER and SANKEY, L.JJ.) allowed the appeal. Treating Mrs. Cook, the holder of the long lease of the premises, as the landlord and ignoring the freeholder who was never at any material time in actual possession within the meaning of the section, the whole dwelling-house had been de-controlled *in rem* by reason of Mrs. Cook coming into actual possession of it, and the de-control applied to the whole house and to every part of it. Once there had been de-control of the whole house, the Rent Restrictions Acts were repealed with regard to it. *Cohen* v. *Gold*, 1927, 1 K.B. 865, was wrongly decided. *Ratkinsky* v. *Jacobs*, 1928, 44 T.L.R. 548, was correctly decided. Appeal allowed.

COUNSEL: *Montgomery*, K.C., *J. C. Lockwood* and *Gordon Clark*; *John Duncan*.

SOLICITORS: *E. M. Tringham*; *A'Deane Gent Wood*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

**Goudge** *v.* **Broughton.** 17th July.

LANDLORD AND TENANT — EMERGENCY RESTRICTIONS—DWELLING-HOUSE—COTTAGE—DE-CONTROL—ACTUAL POSSESSION BY THE LANDLORD—"LANDLORD"—NO PREVIOUS LETTING OF COTTAGE—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

Appeal from the Divisional Court. The Plaintiff claimed to recover possession of a cottage in Surrey which had been let to the defendant on a monthly tenancy at a rent which brought it within the operation of the Rent Restrictions Acts. The plaintiff had bought the cottage in question in October, 1925. It had never been previously let. When he bought it he found in it the gardener of the previous owner. The gardener stayed in the cottage, paying no rent, until December, 1926, when the plaintiff let the cottage to the defendant. The gardener ultimately went out of his own accord. The defendant then remained in sole occupation of the cottage until the plaintiff gave her notice to quit. To an action for possession brought by the plaintiff, the defendant pleaded the Rent Restrictions Acts. The deputy county court judge held, distinguishing *Cohen* v. *Gold*, 1927, 1 K.B. 865, that the cottage was de-controlled and made an order for possession. The Divisional Court reversed the decision of the deputy county court judge, holding that the plaintiff could not be a "landlord" who had obtained actual possession because the cottage had never been previously let. The plaintiff appealed. The court (Scrutton, Greer and Sankey, L.JJ.) allowed the appeal. The plaintiff Goudge was in actual possession of the cottage after the passing of the Act of 1923, and the cottage had thereby become de-controlled, for it was not necessary that the cottage should have been previously let to make the plaintiff "the landlord" within the meaning of sub-s. (1) of s. 2 of the Act of 1923. *Cohen* v. *Gold*, *supra*, was wrongly decided. Decision of the Divisional Court reversed.

COUNSEL: *Croom-Johnson*, K.C., and *Horace Douglas*; *W. N. Stable*.

SOLICITORS: *George Brown, Son & Vardy*, for *Bacon, Phillips & Pringle*, Redhill; *Westbury, Preston & Stavridi*, for *Greee & Patten*, Redhill.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

**Barker** *v.* **Hutson.** 17th July.

LANDLORD AND TENANT—DWELLING-HOUSE—RECOVERY OF POSSESSION—RENT RESTRICTIONS—DE-CONTROL—POSSESSION OF LANDLORD—SUBSEQUENT LETTING OF PART—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

Appeal from the Divisional Court. In 1926, the owners were in actual possession of a dwelling-house, No. 3, Oxford Road, Ealing, and on 25th December, 1926, she let it to Barker, the appellant. In May, 1927, the appellant sub-let two rooms to Hutson, the respondent. The appellant gave the respondent notice to quit. The respondent relied on the protection of the Rent Restrictions Acts, and took out a summons for an apportionment of the rent of the two rooms. The county court judge, following *Cohan* v. *Gold*, 1927, 1 K.B. 865, and finding that the two rooms had never been let as a separate dwelling-house before, decided in favour of the tenant. The Divisional Court, following *Lloyd* v. *Cook*, 72 Sol. J. 319; 44 T.L.R. 455, dismissed the appeal. By s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, where the landlord of a dwelling-house to which the principal Act, i.e., the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house. The landlord appealed.

The Court (SCRUTTON, GREER and SANKEY, L.JJ.) allowed the appeal, holding that when the freeholders were in actual possession of the whole dwelling-house after July, 1923, the whole of the dwelling-house and every part of it became de-controlled and control did not revive on the letting of the whole house to the appellant or the two rooms to the respondent.

The appellant was entitled to an order for possession. Appeal allowed.

COUNSEL: *Humphrey Edmunds; John Duncan.*

SOLICITORS: *Lambert & Hale*, for *Lambert, Hale & Proctor*, Ealing; *A'Deane Gent Wood.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

**Simson** *v.* **Miatt.** 17th July.

LANDLORD AND TENANT—RENT RESTRICTIONS—DWELLING-HOUSE—DE-CONTROL—ACTUAL POSSESSION BY LANDLORD—"LANDLORD"—RENT PAYABLE LESS THAN TWO-THIRDS RATEABLE VALUE—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 12 (7)—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

Appeal from the Divisional Court. The plaintiff claimed to recover possession of three rooms on the top floor of a dwelling-house. One Miller was a tenant of the dwelling-house under a long lease at £10 a year. Miller let the dwelling-house to the plaintiff at a rent of £60 a year. During this time the plaintiff let four rooms on the top floor and one room on the ground floor to one Mitchell. In 1922, Mitchell went out, and the plaintiff, as tenant to Miller, was in possession of the whole house. In December, 1925, the plaintiff purchased from Miller the unexpired portion of the lease, being then in possession of the whole of the dwelling-house as tenant under the long lease. In April, 1926, the plaintiff let to Miatt, the defendant, three out of the four rooms on the top floor. The defendant did not pay his rent. The plaintiff therefore took out a summons for possession. The defendant replied with a summons for apportionment. The county court judge held that the plaintiff was always a tenant and never a landlord, and that the premises were not, therefore, de-controlled. The Divisional Court, without expressing any opinion on the question whether the plaintiff was always a tenant and never a landlord, held, following *Lloyd* v. *Cook*, 44 T.L.R. 455, that as the three rooms let to the defendant had never been previously let, the plaintiff did not come into possession of them as the landlord. By s. 12, sub-s. (7) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920: "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy . . . and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or had existed. By s. 2 sub-s. (1) of the Rent and Mortgage Interest Restrictions Act, 1923: Where the landlord of a dwelling-house to which the principal Act, i.e., the Rent Restrictions Act of 1920, applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house. The plaintiff appealed.

The Court (SCRUTTON, GREER and SANKEY, L.JJ.) allowed the appeal. When in December, 1925, the plaintiff bought the unexpired portion of Miller's long lease—a lease which came within s. 12, sub-s. (7) of the Act of 1920—it could therefore be ignored. Consequently, the plaintiff was a landlord within the meaning of s. 2 of the Act of 1923, and as he had been in possession of the whole of the dwelling-house within the meaning of that section since 31st July, 1923, the whole house and every part of it, including the rooms which had been let to the defendant, were outside the protection of the Rent Restrictions Acts. The plaintiff was therefore entitled to recover possession. Appeal allowed.

COUNSEL: *Hanbury Aggs and T. M. O'Callaghan; John Duncan.*

SOLICITORS: *William Bird; A'Deane Gent Wood.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

# Societies.

## The Manchester Law Society.

The Annual General Meeting of this Society was held on the 24th July at the Law Library, Manchester, Mr. P. J. Skelton, the retiring President, being in the chair.

The Report of the Council for the past year showed a total membership of 396, and dealt with the work of the Council in connexion with, amongst other matters, the Moneylenders Act, arrestment on the dependance, the district registrarship, income tax on members' subscriptions, legal education and the Poor Persons Committee. The report referred to the loss the Society and the profession had sustained by the recent death of Mr. W. H. Norton, who had been a member of the Council since 1891, and was President in 1904, and who had represented the Society on the Council of The Law Society since 1903, and was President of that Society in 1924. The report of the Poor Persons Committee showed that for the year ending 31st December, 1927, 382 applicants had been supplied with application forms and that 264 applications had been received and dealt with and sixty-seven solicitors were on the list as willing to give gratuitous service.

Mr. Skelton, in his presidential address referring to the fact that a general strike was now illegal, said that one would have thought that the objects aimed at by the Trade Disputes Act could be found in Magna Charta, but that the obligations of human life were so great that it required an Act of Parliament to bring us back to fundamental purposes. In regard to the new Companies Bill, he hoped that directors would not be placed in a position where they could be interfered with too much by shareholders in the conduct of the business of a company as this would not be in the best interests of the company and might be a great source of danger. He referred to the fact that public opinion had been much aroused by anxiety to prevent any trespass on the liberty of the subject, but he thought that most people had now come to the conclusion that a great organisation like the police force trusted as it was and of necessity with enormous powers, must exercise the very utmost discretion when those great powers were used in its own defence. He emphasised the value of the system of the poor persons procedure, which was now a special system growing every day and that there was no difficulty at all, and no hardship in the undertaking by any practitioner of his fair share of poor man's cases along with his other work. He pointed out the high offices of trust that were filled by solicitors in domestic and commercial affairs, and said that it was the daily duty of solicitors to see that the increasing confidence and acknowledgment of usefulness was kept well before them, and that every effort was put forward to deserve what had been attained.

The following officers were elected: President, Mr. W. E. H. Mainprice; Vice-President and Hon. Secretary, Mr. K. M. Atkinson; Hon. Treasurer, Col. A. F. Maclure, C.B.

## The Hardwicke Society.

The annual general meeting of the Hardwicke Society was held on the 6th ult., in the Middle Temple Common Room, with Mr. H. M. Pratt, the retiring president, in the chair. The annual report and balance sheet were approved, and the following were elected as officers and committee for the ensuing year:—President, L. A. Abraham; Vice-President, Ifor Lloyd; Hon. Treasurer, G. G. Raphael; Hon. Secretary, C. H. Pearson; Committee: Gerald Thesiger, J. H. Penson, J. W. J. Cremlyn, S. Seuffert, Miss E. Bright Ashford, and Vyvyan Adams.

The annual dinner will be held on Tuesday, 6th November, 1928, at the Hyde Park Hotel, Knightsbridge. His Royal Highness the Duke of York has graciously consented to be present as a guest of the Society, together with the Lord Chancellor, The Marquis of Reading and the Solicitor-General. Tickets, price 10s. 6d., may be obtained by members of the society from the Hon. Treasurer, M. G. G. Raphael, at 2, Essex-court, Temple, E.C.4. Early application is necessary.

## Solicitors' Benevolent Association.

The usual monthly meeting of the directors of this Association was held on the 11th ult., at the Law Society's Hall. Mr. Charles E. Barry (Bristol) in the chair. The other directors present were Sir Reginald W. Poole and Messrs. F. E. Barham, E. E. Bird, A. C. Borlase (Brighton), E. R. Cook, W. F. Cunliffe, E. F. Dent, E. F. Knapp-Fisher, H. Fulton (Salisbury), C. G. May, H. A. H. Newington, M. A. Tweedie, and H. White (Winchester). One thousand four hundred and nine pounds was distributed in grants of relief. Twenty-one new members were admitted, and other general business transacted.

# Rules and Orders.

THE RULES OF THE SUPREME COURT (POOR PERSONS), 1928, DATED JULY 20, 1928.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1.—(1) Where an application to be admitted to take or defend or be a party to any legal proceedings in the High Court as a poor person had been received and referred for inquiry to a reporter before the sixth day of April, 1926 (being the appointed day for the commencement of the Rules of the Supreme Court (Poor Persons) 1925(*), it shall, so far as the proceedings to which it related have not been finally disposed of, be dealt with, and the proceedings to which it relates shall be commenced or continued under those Rules as amended by this Rule, and the provisions of Part IV of Order XVI of the Rules of the Supreme Court, 1883, as amended by any subsequent Rules including the Rules of the Supreme Court (Poor Persons) 1925 and these Rules shall apply to any such application and proceedings respectively as if the application to be admitted had been made after the sixth day of April, 1926.

(2) Paragraph (1) of Rule 6 of the Rules of the Supreme Court (Poor Persons) 1925 (which relates to such applications and proceedings) is hereby revoked.

2. The following amendments shall be made in Part IV of Order XVI of the Rules of the Supreme Court, 1883 :—

(*a*) In paragraph (4) of Rule 23 the words " proceedings in the High Court or Court of Appeal " shall be substituted for the words " such proceedings."

(*b*) In paragraph (5) of Rule 28, the words " not exceeding £5 " in the second place where they occur shall be omitted, and the words " in relation to the proceedings " shall be substituted for the words " in the course of the proceedings."

(*c*) In Rule 29 there shall be added the following paragraph :—

" (2) The Committee may discharge the certificate at any time before it has been filed, whether or not any application be made for its discharge."

(*d*) Rule 31 shall be revoked, and the following Rule shall be substituted therefor :—

" 31.—(1) If and whenever the poor person (or in matrimonial causes when the wife is the poor person she or her husband) becomes possessed of means beyond those stated in the certificate, the poor person shall forthwith and from time to time report the matter to the conducting solicitor.

(2) When the matter comes to the notice of the conducting solicitor whether by means of such report or otherwise, he shall forthwith report it in writing to the Committee which nominated him."

(*e*) In Rule 31B the words " or by " shall be inserted after the words " ordered to be paid to."

(*f*) In Rule 31D the words " or summons " shall be substituted for the words " summons or petition."

(*g*) The following Rule shall be inserted after Rule 31D :—

" 31DD.—(1) Where proceedings to which a poor person is a party are ordered to be transferred to a County Court, the proper officer of the Supreme Court shall, on the application of the conducting solicitor and on the filing of a copy of the order, send by post to the Registrar of the County Court the certificate admitting the party as a poor person.

(2) Where a person has proceeded in a County Court as a poor person, there shall be no appeal as a poor person from the County Court to the High Court without the leave of the Judge of the County Court or of a Divisional Court of the High Court.

(3) Where such leave has been granted, the conducting solicitor shall file with the proper officer of the Supreme Court the certificate admitting the party as a poor person and either a certificate that such leave has been granted in the County Court or a copy of an order of the High Court granting such leave, and thereupon a memorandum of such filing shall be issued to the conducting solicitor and the provisions of this Part of this Order shall apply."

3. Paragraph (2) of Rule 2 of Order XXXVA shall be amended as follows :—

(*a*) after the word " securing," there shall be inserted the words " due observance of statutory requirements " ; and

(*b*) after the words " District Registries " at the end of the paragraph, there shall be inserted the words " and necessary facilities for the discharge of the duties of the King's Proctor."

4. These Rules may be cited as the Rules of the Supreme Court (Poor Persons) 1928, and shall come into operation on the 1st day of August, 1928, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

Dated the 20th day of July, 1928.

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| *Hailsham*, C. | *T. J. C. Tomlin*, J. |
| *Hanworth*, M.R. | *E. H. Tindal Atkinson.* |
| *P. Ogden Lawrence*, L.J. | *C. H. Morton.* |
| *A. A. Roche*, J. | *Roger Gregory.* |
| *Rigby Swift*, J. | |

*S.R. & O. 1925, No. 908.

THE COUNTY COURT (POOR PERSONS) RULES, 1928, DATED 20TH JULY, 1928.

1. These Rules may be cited as the County Court (Poor Persons) Rules, 1928, and shall be read and construed with the County Court Rules, 1903,(*) as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended. The Appendix referred to in these Rules is the Appendix to the County Court Rules, 1903, as amended.

The Court Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. The following Rule shall be added to Order XXXIII as Rule 20 of that Order :—

" 20.—(1) Where a person has been admitted to take or defend or be a party to any proceedings in the High Court as a poor person and the proceedings have been transferred to a County Court, the Rules of the Supreme Court relating to proceedings by and against poor persons, with the additions and modifications contained in the succeeding paragraphs of this Rule, shall apply, so far as they are applicable, as if they had been in terms inserted in these Rules.

(2) The conducting solicitor shall apply to the proper officer of the Supreme Court to send to the Registrar of the County Court to which the proceedings have been transferred the certificate admitting the party as a poor person, in addition to the pleadings affidavits and other documents filed in the High Court relating thereto.

(3) Notwithstanding anything in Order XVI, Rules 22 and 23, Order XXVII, Rule 3A, or Order XXXIII, Rule 1, a person proceeding as a poor person under this Rule shall not be required to give security for costs.

(4) The powers conferred upon the Court or a Judge—

(*a*) to order a poor person to pay costs to any other party or to receive from any other party any profit costs or charges ;

(*b*) to discharge the certificate and direct it to be taken off the file ;

(*c*) to grant leave to the poor person or a solicitor conducting the proceedings for him to discontinue settle or compromise such proceedings or to discharge any solicitor or counsel acting for him ;

(*d*) to grant leave to a solicitor or counsel acting for a poor person to discontinue his assistance ;

(*e*) to order in special circumstances that the costs ordered to be paid to or by a poor person shall include profit costs and charges ;

(*f*) to order payment to the conducting solicitor out of money recovered by the poor person or to grant a charge in favour of the conducting solicitor upon any real or personal property recovered by a poor person ;

may be exercised by the Judge of the County Court to which the proceedings are transferred.

(5) A person who has proceeded in a County Court as a poor person under this Rule may, subject to Rules of the Supreme Court, apply to the Judge of the County Court for leave to appeal as a poor person to the High Court, and if leave is granted, the Registrar shall deliver to the conducting solicitor the certificate admitting the party as a poor person, and a certificate that leave to appeal as a poor person has been granted.

We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888,(†) and section twenty-four of the County Courts Act, 1919,(‡) to frame Rules and Orders for regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

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| *W. M. Cann.* | *T. Mordaunt Snagge.* |
| *J. W. McCarthy.* | *A. O. Jennings.* |
| *Hugh Sturges.* | *A. H. Coley.* |
| *S. A. Hill Kelly.* | |

Approved by the Rules Committee of the Supreme Court.

*Claud Schuster*,
Secretary.

I allow these Rules which shall come into force on the 1st day of August, 1928.

Dated the 20th day of July 1928. *Hailsham*, C.

*S.R. & O. Rev. 1904, III County Court, E., p. 89 (1903, No. 629).
†51-2 V. c. 43. ‡9-10 G. 5, c. 73.

# Legal Notes and News.

## Honours and Appointments.

The King, on the recommendation of the Secretary of State for Scotland, to whom the name was submitted by the Lord Justice General, has approved of the rank and dignity of King's Counsel to His Majesty in Scotland being conferred on Mr. ALEXANDER MAITLAND, Advocate.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. JOHN HENRY HARRIS, Recorder of Portsmouth, shall be appointed additional Metropolitan Police Magistrate. Mr. Harris was born in 1875, and was educated at St. Paul's School and Merton College, Oxford. He was called to the Bar by the Inner Temple in 1900, and was appointed Recorder of Portsmouth in 1927.

Mr. GEORGE P. MORRIS, LL.B., Solicitor, Town Clerk of Chesterfield, has been appointed Town Clerk of the City of Westminster, at a salary of £1,800, rising (by annual increments) to £2,500 per annum. Mr. Morris—who succeeds Sir John Hunt—served in France from 1914 to 1918, and was admitted in 1919.

The King has approved the appointment of Mr. MORGAN PHILLIPS GRIFFITH-JONES, stipendiary magistrate for Middlesbrough, as one of the two additional Metropolitan Police Magistrates.

## Wills and Bequests.

Mr. F. H. NEWNHAM, Deputy Clerk of the Northfleet (Kent) Urban District Council, has been appointed Clerk of the Council to fill the vacancy caused by the resignation of Mr. C. R. W. Haedicker, solicitor.

Mr. Patrick David Fleming, K.C., of Herbert-street, Dublin, formerly County Court Judge for King's County and Westmeath, who died on 3rd April, left personal estate in England and the Irish Free State valued for probate at £6,319. He left £50 to Sarah Kelly, if still in his service.

Mr. Charles James Richard Tijou has just retired from the position of High Bailiff at the Bow County Court. He had been connected with the court in an official capacity for sixty-three years, the last thirty-eight as High Bailiff.

### THE VACATION.

The Benchers of Gray's Inn have resolved that from the 7th to the 31st of August, the gardens of Gray's Inn shall be open to the children of the surrounding district on fine evenings from 6 to 8. The children will be admitted at the gate in Verulam Buildings.

### GROUP INSURANCE.—POLICY FOR £80,000,000.

Over 200,000 employees of General Motors Corporation, New York, were made the participants on Tuesday, the 24th July, in what is described as the largest private group insurance policy ever issued. The policy is for nearly £80,000,000, and covers death, sickness, and accident.

The insurance is co-operative, but the corporation itself assumes a substantial part of the premium.

### "JUSTICE."

By a curious coincidence Sir William Joynson-Hicks and Mr. Edward Short—present and past Home Secretaries—were interested spectators, from opposite sides of "the House," of Mr. Leon M. Lion's revival of "Justice" at Wyndham's Theatre the other night. Both obviously enjoyed the performance. But it would be interesting to learn what they thought of this powerful indictment of the inherent defects, in operation, of the judicial system they represent. Sir William Joynson-Hicks' instruction to magistrates, advising them not to send young offenders to jail where it can possibly be avoided, may not be entirely unconnected with his recent visit to "Justice."



# Long Vacation, 1928.

### NOTICE.

During the Vacation, up to and including Wednesday, 5th September, all applications "which may require to be immediately or promptly heard," are to be made to The Hon. Mr. Justice CHARLES.

COURT BUSINESS.—The Hon. Mr. Justice CHARLES will, until further notice, sit in The Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday in each week commencing on Wednesday, 8th August, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

PAPERS FOR USE IN COURT.—CHANCERY DIVISION.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 10s. impressed stamp.

3.—Two copies of writ and two copies of pleadings (if any).

4.—Office copy affidavits in support, and also affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

*N.B.*—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above, a copy of the writ must also be sent.

The Papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice. Vacation Registrar.—Mr. MORE (Room 188).

CHANCERY CHAMBER BUSINESS.—The Chancery Chambers will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice CHARLES will, until further notice, sit for the disposal of King's Bench Business in Judge's Chambers at 11 a.m. on Tuesday in each week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 15th and 29th August and the 12th and 26th September, at the Principal Probate Registry, at 12.15.

Decrees will be made absolute on Wednesdays, the 8th and 22nd August, the 5th and 19th September and the 3rd October.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

Royal Courts of Justice.
July, 1928.

## Points in Practice.

Special arrangements have been made to continue to deal promptly with all Points in Practice submitted during the Vacation. Subscribers will, however, greatly facilitate matters by condensing the questions as much as possible, consistent with an accurate statement of the facts.